No. 09-946

Supreme Court, U.S.
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In The
Supreme Court of the United States

JOSEPH JASKOLSKI, et al.,

Petitioners,

v.

RICK DANIELS, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Indiana Court Of Appeals

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW RESTATED

Whether Joseph Jaskolski, an investigator and salaried employee with the National Insurance Crime Bureau (NICB), should be considered by the Court to be a government employee under the Westfall Act, 28 U.S.C. § 2671, despite the fact that no court, state or federal, has ever found Jaskolski to be anything other than an employee of NICB.

Whether the Indiana Court of Appeals correctly analyzed, and ruled consistently with both *Logue v. United States*, 412 U.S. 521 (1973) and *United States v. Orleans*, 425 U.S. 807 (1976) in making its determination that Jaskolski was not an employee of the government, based upon the fact that the United States government had insufficient authority over him to control his detailed physical performance.

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STATEMENT OF JURISDICTION

This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1257, which confers jurisdiction on the Court by Writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

STATEMENT OF THE CASE

I. Facts Relevant to the Petition

The facts relevant to the petition show Joseph Jaskolski is and was an investigator and salaried employee with the National Insurance Crime Bureau, and has been since 1992. (Pet. App., hereinafter App. 6-8, 49, 51, 165) (Resp. App. 2, 13-14). The National Insurance Crime Bureau (NICB) is a not-for-profit organization, funded by the insurance industry to combat insurance fraud and vehicle theft. (App. 7-8, 50, 165) (Resp. App. 2, 3).

On November 13, 1998, an "anonymous tip" came into Liberty Mutual Insurance (through discovery it was determined the tip came from another Liberty Mutual number) claiming a fraudulent and financial motive for the fire, and the NICB investigated the claim as an arson. (App. 7, 50) (Resp. App. 9-12). Jaskolski, a senior agent, investigator and employee of NICB became involved in investigating the insurance claim at the request of Liberty Mutual. (App. 8, 50-51, 165) (Resp. App. 3, 4, 10).

The work Jaskolski did in investigating or "researching" the claim was done on behalf of the National Insurance Crime Bureau. (App. 8, 32, 51) (Resp. App. 4). Jaskolski on behalf of NICB created a single case file for the Daniels' claim, which contained the original request from Liberty Mutual, and kept by Jaskolski at his home office. (App. 8, 51). Jaskolski had the discretion to decide whether or not to turn a referral into a case file as the result of research and investigation he would conduct and did not need a supervisor's approval, or Liberty Mutual's approval to make this decision. (App. 55) (Resp. App. 5, 6).

While he worked on the Daniels file, however, Jaskolski worked on "numerous other cases" simultaneously. (Resp. App. 13-14). Prior to contacting the FBI and providing them with his file, Jaskolski saw no evidence that Rick Daniels had set fire to his brother's motor home, nor had any information of financial motive for arson. (Resp. App. 9-11, 15). Despite this fact, Jaskolski took the information from his four-week-long investigation and the NICB case file and made a written investigative presentation to the FBI. (App. 8, 32, 37, 50-51, 63) (Resp. App. 4-7, 14). As was noted by the reviewing Court, Jaskolski sought out the FBI for help in the prosecution of this matter and the FBI did not seek out the help of Jaskolski, and no evidence existed for the creation of a master/servant relationship. (App. 63-64) (Resp. App. 7-8, 15-16).

During the investigation and prosecution of the Daniels brothers, Jaskolski at all times remained a

salaried employee of the NICB. (App. 8, 32, 37, 63) (Resp. App. 13). Jaskolski states that he was never actually hired, employed or paid by the FBI, nor was a formal written agreement entered. (App. 8, 37, 51, 63-64). Jaskolski received his regular salary and didn't lose any time or pay after he took his investigative file to the FBI on the Daniels case. (App. 51).

During questioning of witnesses, Jaskolski was not provided with copies of the FBI's "form 302" interview notes. (Resp. App. 9). Jaskolski testified the case was a joint investigation between NICB and the FBI and that the FBI did "80 percent" of the investigative work and he did the rest. (Resp. App. 15-16). Jaskolski was not present during the Grand Jury. (Resp. App. 17, 19-20). Following a jury trial, both Rick and his brother Bucky Daniels were acquitted on all thirty-four counts. (App. 7, 50).

From the initial request for certification to the present, the United States Attorney General has consistently opposed Jaskolski's and NICB's petition for Westfall Act certification stating that neither NICB nor Joseph Jaskolski were employees of the federal government as the Federal Investigators did not have a right to control Mr. Jaskolski's day-to-day activities. (App. 13). In addition, the facts of the case show that even while claiming to assist the FBI in its prosecution of the Daniels, Jaskolski continued to work on other NICB cases, and was introduced at the criminal trial as a representative of NICB, and is not a government employee. (App. 13, 55, 63) (Resp. App. 17-19).

II. Procedural History and Opinion Below

The case before the Court on Petition for Writ of Certiorari originated with a Complaint filed in Lake County Indiana Superior Court on December 28, 2001, by the Appellees/Plaintiffs against Joseph Jaskolski, the National Insurance Crime Bureau and other parties. (App. 7, 66). *Nearly five years later*, on June 13, 2006, both Joseph Jaskolski and the National Insurance Crime Bureau filed a petition pursuant to 28 U.S.C. § 2679, with the United States Attorney General, requesting certification of federal employee status under the Westfall Act. (App. 7, 50, 66).

The United States Attorney General refused (and to this day has refused) to certify that Joseph Jaskolski and the National Insurance Crime Bureau are employees of the government and this denial of certification was affirmed by the District Court on September 14, 2006, and the case ordered remanded to state court. *Daniels v. Liberty Mutual Ins. Co.*, 2006 U.S. Dist. LEXIS 65896 (N.D. Ind. 2006). (App. 14, 46). Jaskolski and the NICB attempted to appeal this decision to the Seventh Circuit, which dismissed the appeal for lack of jurisdiction. (App. 73).

Jaskolski and NICB then filed a Motion for Ruling on Petition for Certification under the Westfall Act in the Lake Superior Court. (App. 44). The Lake Superior Court on July 28, 2008, also denied certification. (App. 15, 44). Jaskolski appealed this denial of Westfall certification to the Indiana Court of Appeals,

which utilized the analysis found in *Logue* and *Orleans*, and affirmed the trial court's judgment holding that Jaskolski was not a government employee. *Jaskolski v. Daniels*, 905 N.E.2d 1, 20 (Ind. App. 2009). (App. 43). Jaskolski then filed a Petition for Rehearing which was denied on July 24, 2009. (App. 76). Jaskolski next filed a Petition for Transfer to the Indiana Supreme Court which was also denied on November 12, 2009. (App. 79). Petitioner Jaskolski's request for Petition for Writ of Certiorari followed.

ARGUMENT

Certiorari Is Not Warranted Because The Lower Courts' Interpretation Of The Law Is Not Contrary To The Standards Established In *Logue* And *Orleans* And The Lower Courts Correctly Found Jaskolski Not To Be An Employee Of The Federal Government Under The Westfall Act.

The Petitioner seeks a writ of certiorari from the 2009 decision of the Indiana Court of Appeals and denial of transfer by the Indiana Supreme Court, which held that Jaskolski was not an employee of the federal government. The United States Attorney General's decision now before the Court has been reviewed by both state and federal courts, de novo, and no single reviewing court has held that Joseph Jaskolski is an employee of the federal government. (App. 26, 71).

The litigation in the present case is bound by and controlled by the Federal Employees Liability Reform and Tort Compensation Act of 1988, commonly known as the "Westfall Act." *Osborn v. Haley*, 549 U.S. 225, 127 S. Ct. 881, 887 (2007).

The Westfall Act grants to federal employees immunity from most claims which arise out of the scope of their employment. *Osborn v. Haley*, 127 S. Ct. at 887. When a civil action is brought in state court the employee being sued then requests, pursuant to 28 U.S.C. § 2679, that the United States Attorney General certify that the person named in the suit is an employee of the federal government acting in the scope of their employment. *Id.* at 888. If Attorney General Certification occurs, the matter is removed to federal court and remains in federal court, with the United States substituted as a party for the named employee. *Id.* As the Attorney General has complete discretion in such matters, the Attorney General can choose to certify anyone it chooses, and Petitioner's argument that the federal government's ability to enlist the aid of volunteers of its choosing (and thereby impairing the government's performance of its functions) is without merit.

If, however, the Attorney General declines certification, as has consistently happened in the Jaskolski case, the matter is remanded to state court. *Id.* 28 U.S.C. § 2679(d)(2) states that the certification of the Attorney General "shall conclusively establish scope of office or employment for purposes of removal." *Id.* at 890. There is no language in the statute that

requires the Attorney General to "grant certification in all cases, but instead, apparently leaves that decision to his sound discretion." *Lemley v. Mitchell*, 304 F. Supp. 1271, 1273 (D.C. Dist. 1969).

The burden of proof is, and has been, upon Jaskolski to persuade the reviewing Courts that the United States Attorney General's denial is incorrect. *Jaskolski v. Daniels*, 905 N.E.2d 1, 14 (Ind. App. 2009), *citing Palmer v. Flaggman*, 93 F.3d 196, 198-99 (5th Cir. 1996). The trial court, court of appeals, and Indiana Supreme Court all correctly found that Jaskolski and NICB failed to meet that burden.[1]

The United States Court of Appeals for the Seventh Circuit clearly ruled that NICB, Jaskolski's employer, was not, nor could not be a federal employee in that "a corporation could not be a federal employee on any understanding." *Daniels v. Liberty Mutual Insurance Co.*, 484 F.3d 884, 886 (7th Cir. 2007). (App. 68). The words "persons" as used in 28 U.S.C. § 2671 (FTCA) does not include corporations. (App. 68).

As the record is clear that Jaskolski is not an employee of a federal agency, he is required to demonstrate he is a "person acting on behalf of a

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[1] NICB and its employees even if assisting or helping the FBI cannot be a "government employee" as under the language of the FTCA, "individuals and organizations that are independent contractors are specifically not included." *Daniels v. Liberty Mutual Ins. Co.*, 2006 U.S. Dist. LEXIS 65896.

federal agency in an official capacity, temporarily or permanently in the service of the United States." *Id.*, *citing* 28 U.S.C. § 1346. (App. 62). This category of individuals is reviewed narrowly, and Jaskolski would be required to show "the authority of the principal to control the detailed physical performance of the contractor." *Jaskolski* at 14, *citing Logue v. United States*, 412 U.S. 521, 528 (1973).

The *Logue* case involved a suicide at a county jail under contract to house federal prisoners, operating under specific federal standards and rules, but without the federal government having the authority to "physically supervise the conduct of the jail's employees." *Id.* at 530. In keeping with the control holding in *Logue*, was the case of *United States v. Orleans*, 425 U.S. 807 (1976). The *Orleans* case involved a federally funded community action agency created to carry out federally created programs. *Id.* at 815. Despite the federal regulation of both groups, the employees of both were held to be contractors not agencies, and the employees of those contractors, not government employees. *Logue* at 527.

The resolution of the matter came down to whether the government supervised the day-to-day performance of the employee's work and not whether the group received "federal money and must comply with federal standards and regulations." *Orleans* at 815. Accordingly, petitioners' reliance upon *Denton v. Yazoo & M.V.R. Co.*, is misapplied, as in *Denton*, a specific statute existed which required a railroad to provide men to transport the U.S. Mail, under specific

terms, conditions and under the *direct supervision of a postal clerk*. *Id.*, 284 U.S. 305, 307 (1932). In the present case, no such statutory requirement exists and at all times Jaskolski was working for and serving the interests of his employer, the NICB, on an investigation he initiated, that predated the FBI's handling of the case. *Id.* at 305 (1932). Jaskolski has never made the requisite showing of the federal government's authority to supervise and control his work, so as to qualify as a "government employee" under the Westfall Act.

As both the district court and the Indiana appellate courts have decided, Jaskolski, is an employee of the NICB and not of the United States. In determining whether a party is a government employee, self-serving characterizations are irrelevant, and the basic test to be applied is the extent to which the federal government controls or can control the work of the party in question. *Wright v. United States*, 537 F. Supp. 568, 570 (N.D. Ill. 1982). Broad supervisory control, or potential to exercise detailed control cannot convert a contractor into an agent, nor serve as the basis for imposing vicarious liability on the United States. *Gibson v. United States*, 567 F.2d 1237, 1242 (3rd Cir. 1977).

In order to find control sufficient to establish government employment, the government must be authorized to "direct or control the day to day performance of Jaskolski's work." *Daniels v. Liberty Mutual Ins. Co.*, 2006 U.S. Dist. LEXIS 65896 *18 (N.D. Ind. 2006). While Jaskolski may allege (subjectively

and for his own benefit) that government agents controlled his work, that allegation is insufficient, as the standard requires that the FBI (objectively) had the "authority to control the physical conduct of Jaskolski." *Daniels v. Liberty Mutual Ins. Co.*, 2006 U.S. Dist. LEXIS 65896 *20 (N.D. Ind. 2006), *citing Thompson v. Dilger*, 696 F. Supp. 1071, 1075 (E.D. Va. 1988). Clearly, as Jaskolski was a salaried employee of NICB, with other duties and responsibilities to that agency, who had commenced the fraud investigation on the Daniels before the FBI's involvement, was excluded from the grand jury proceedings, and was at all times identified by the government as a NICB employee, the objective level of control does not exist over his day-to-day performance. (Resp. App. 2-19).

At all times during Jaskolski's unpaid assistance to the FBI, he remained an employee of NICB, maintained and worked on other files, and was not docked, penalized or terminated for the time spent on the Daniels' case while it was pending with the FBI. (App. 32, 51) (Resp. App. 13). As the Indiana Court of Appeals noted, Jaskolski was free at any time to withdraw his services from the FBI. *Jaskolski v. Daniels*, 905 N.E.2d 1 (Ind. App. 2009) (App. 38). It is interesting to note that neither Jaskolski nor the NICB requested certification as government employees until nearly *seven years* after the investigation and prosecution commenced against the Daniels, and so it cannot be objectively said that at the time of his actions, Jaskolski considered himself a government

employee, but only sought the legal protection of the Westfall Act once litigation commenced and he and his company realized the Daniels were seeking to hold them civilly liable.

As the requisite, objectively viewed, day to day, physical control did not exist in the present case, the Indiana Court of Appeals, following U.S. Supreme Court precedent, ruled correctly and cannot be said to have misapplied the law in the present case, or that such well-reasoned application will adversely impact the future functioning of the federal government.

The Indiana Court of Appeals did not act contrary to Supreme Court precedent and in making its ruling was provided with a large amount of evidence, in multiple volumes, consisting of pleadings, affidavits, depositions, and prior court action on the case. Petitioner Jaskolski claims he was permitted to interview grand jury witnesses, yet omits that, during this questioning of witnesses, Jaskolski was not provided with copies of the FBI's "form 302" interview notes, and was excluded from grand jury proceedings.

Jaskolski wishes to make the argument that the Rule 6(e) documents signed by him are conclusive proof that he was considered by the FBI to be a government employee. (App. 9). What Jaskolski, however, does not mention is that the document is signed on August 24, 1998, two months *before* the fire occurred that destroyed the motor home at issue, and three years *before* the lawsuit was filed by the

Daniels. This certification provided by the United States Attorney, which acknowledges that Jaskolski's "agency has assigned" him "to assist an attorney for the government" in a criminal prosecution. (App. 34, 51-52). The form itself, was not specific to the Daniels case, and makes no mention of the FBI, or that it confers any status to the agency or signatory as a governmental employee.

Jaskolski also neglects to admit that in his appeal to the Seventh Circuit, he sought to use this same document classifying himself as "government personnel" under Fed. R. Crim. P. 6(e)(2)(B). (App. 10, 33). The district court held it was "more likely than not that Jaskolski did not fit within the definition of government personnel." *Jaskolski v. Daniels*, 2:03-CV-479, slip op. p.11 August 31, 2004. (App. 10). The Seventh Circuit affirmed the decision of the district court without addressing the "government personnel" issue. (App. 11). The Rule 6(e) document was correctly considered and weighed by the Indiana Court of Appeals and no error attaches to the weight and interpretation given by that Court to that document who noted that nothing in that document conferred government employment status. *Id.* at 17. (App. 35-37).

The Indiana Court of Appeals correctly identified in its opinion that "there is no evidence, other than Jaskolski's own assertions, that the federal government exercised" control over the physical performance of Jaskolski's day-to-day activities. *Jaskolski*, at 18. (App. 62-63). From this holding, Jaskolski

argues that "unfounded evidentiary barriers" have been created by the court of appeals which will negatively impact future litigation.

Jaskolski argues that his word alone, without other evidence, should be sufficient to prove his position, but fails to regard the ten part analysis of Restatement of Agency Section 220, performed by the Indiana Court of Appeals in its opinion, which, coupled with a review of five federal court decisions, forms the basis of its holding. *Jaskolski* at 18-19. (App. 63-64). Simply put, the court of appeals applied a neutral analysis, and under that analysis, Jaskolski failed his burden of proof to show that the United States Attorney General was incorrect. *Id.* at 19. Jaskolski's failure to meet his burden does not create "unfounded evidentiary barriers." The Indiana Court of Appeals did not rule contrary to law.

The Indiana Court of Appeals, in its lengthy and detailed opinion, specifically addressed the complex issue of dual servant and borrowed servant doctrine and its applicability to the case before the Court. *Jaskolski v. Daniels*, 905 N.E.2d 1, 15-16 (Ind. App. 2009). The Indiana Court of Appeals in *Jaskolski*, citing to the Seventh Circuit, found that even if Jaskolski "could be considered a borrowed servant, such that the federal government was only his temporary employer" the standard remained "whether the temporary employer exercised such control over the conduct of the employee" as to make "the employee his servant." *Id., citing Ezekiel v. Michel*, 66 F.3d 894, 903 (7th Cir. 1995).

In making the analysis of this master-servant relationship, the Indiana Court of Appeals explored Sections 2 and 220(2) of the Restatement Second of Agency, which was the same basis for analysis used by the United States Supreme Court in *Logue* and also in *Kelley v. S. Pac. Co.*, 419 U.S. 318, 324 (1974). *Jaskolski* at 14-16. (App. 61). The Indiana Court of Appeals correctly indicated that Jaskolski fails to address the facts of his case with respect to the Restatement of Agency 220 criteria, but instead relies upon the Fed. R. Crim. P. 6(e) document as the basis of his claim of employment. Clearly the Indiana Court of Appeals did not err in its analysis, and certiorari is unwarranted.

CONCLUSION

The Westfall Act was not created to offer the protection of sovereign immunity to any party wishing to have it. A person may have an unsupported, subjective belief that they were an employee of the federal government. This belief, absent actual objective control by the government over daily activities, is insufficient to invoke the Westfall Act. Joseph Jaskolski was an employee of the NICB. The Indiana Court of Appeals correctly applied the law and held that Jaskolski was not an employee of the government as defined by the Westfall Act. Respondents Rick

and Anna Daniels respectfully request that this Court deny the Petitioners' Writ of Certiorari.

Respectfully submitted,

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STATE OF INDIANA)
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COUNTY OF LAKE)

IN THE LAKE SUPERIOR COURT
ROOM NUMBER FIVE
SITTING IN HAMMOND, INDIANA

KENNETH DANIELS and SHARON DANIELS,	) CAUSE NO. 45D05-9910-CP-1828
Plaintiffs	)
VS	)
LIBERTY MUTUAL INSURANCE COMPANY, VEHICLE INVESTIGATIONS, NATIONWIDE, INC., and AMERICAN INSTITUTE OF TECHNOLOGY, INC.,	)
Defendants	)

The deposition of JOSEPH J. JASKOLSKI, JR., taken at the instance of the Plaintiffs herein, pursuant to notice as to time and place and pursuant to the Statutes of the State of Indiana, before Darla R. Allen, CSR-RPR, a Notary Public for the State of Indiana, at 202 Joliet Street, Suite 2-A, Dyer, Indiana, on Wednesday, the 6th day of August, A.D., 2003, commencing at the hour of 1:45 o'clock in the afternoon.

[6] [DIRECT EXAMINATION

BY MR. VANZO:]

Q. How long did you have that position?

A. Since '92.

Q. What is the National Insurance Crime Bureau?

A. It is a non-for-profit organization funded by the insurance industry to conduct criminal investigations and to combat insurance fraud and vehicle theft.

Q. How long have you worked for – I'll call it the NICB. If I call it the NICB, you'll know what I'm talking about?

A. Yes. Clarification though. It was the ICPI, Insurance Crime Prevention Institute, and then in '92 it combined with the National Auto Theft Bureau to become the NICB.

Q. I see. So the NICB existed only since 1992?

A. Correct.

* * *

[8] [DIRECT EXAM: MR. VANZO]

Q. Did you remain the regional manager with the Insurance Crime Prevention Institute until 1992?

A. Correct.

Q. What were your duties as special agent of that organization?

A. To combat insurance fraud and to prevent vehicle theft.

* * *

[39] [BY MR. VANZO:]

Q. At some point you were involved in doing an investigation that – of something that involved Ken and Sharon Daniels; is that right?

A. Correct.

Q. Whatever work you did was that on behalf of the National Insurance Crime Bureau?

A. Correct.

Q. And if you were requested to do that, the request would have come from your superior at the NICB?

A. Correct.

Q. Is it your understanding that anything you did on behalf of the NICB was done – was instigated by the NICB itself?

A. I don't understand that question.

Q. I mean did you understand that there came a day when somebody, your superior or somebody above him, decided let's just investigate Ken Daniels?

A. I make that decision.

* * *

[40] [DIRECT EXAM

BY MR. VANZO:]

Q. You have established that the investigation – that whatever work you did with regard to Ken Daniels that it started with a request from Liberty Mutual to the NICB; is that right?

A. Correct.

Q. Was all the work you conducted on behalf of the NICB regarding Ken Daniels in response to that initial request from Liberty Mutual?

A. No.

Q. And when you say no, are you distinguishing work you may have conducted on behalf of the U.S. Attorney's Office?

A. Correct.

Q. Anyone else besides the U.S. Attorney or Liberty Mutual?

A. U.S. Attorney including the F.B.I.?

Q. Okay. Yes, the federal government.

* * *

[99] BY MR. VANZO: (continuing)

Q. So three or four weeks after a case – you opened the case file, you had – you made some referral to the F.B.I.; is that what you're saying?

A. Well, first I had to get the case file which may have took a week or two. I don't know how long. Once I got the case file, saw the inconsistency from the statements, I immediately took it over to the F.B.I. White Collar Crime Unit for additional investigation.

Q. Okay. At some point, whether it's three or four weeks or whatever it was –

A. It was three, four weeks.

Q. – you contacted the F.B.I.; is that right?

A. That's correct.

Q. Before you contacted the F.B.I., did your decision to contact the F.B.I. need to be discussed with anybody else at NICB?

A. No.

* * *

[102] [DIRECT BY MR. VANZO]

Q. Who did you contact at the F.B.I.?

A. I believe Tim Campbell was working white collar crimes at that time.

Q. Did you contact anyone at Liberty Mutual other than to request the claims file before contacting Tim Campbell?

A. No.

Q. At any time did you have any conversations with anyone at Liberty – any telephone conversation with anyone at Liberty Mutual in the period from the time you opened your file until you contacted Tim Campbell?

A. Not that I recall.

* * *

[104] BY MR. VANZO: (continuing)

Q. And I'm sorry, this interruption. I lost track. Did you say you met with Tim Campbell face to face?

A. Right, and his supervisor whoever was in charge of the Merrillville office.

Q. Okay. Did you make any record of that meeting?

A. There would be a record of that meeting, yeah. Just that I presented the investigative summary.

Q. Would that have been – you said there would be a record. Is this something that you made?

A. Yes.

Q. Okay. And is this – whatever it is you made, would that record also be in your claim file –

A. Electronic.

Q. – or case file?

A. Electronic file.

Q. Your electronic part of your case file?

A. Yes.

Q. What occurred at that meeting?

A. I virtually explained to the F.B.I. what I had and what I found, all the inconsistencies in every one of the statements. That there was a motorcycle involved. That there was a record of this motorcycle and we were bringing it to them to consider additional investigation if there was needed.

* * *

[106] BY MR. VANZO: (Continuing)

Q. You said you gave them a presentation. What else happened?

A. I believe the supervisor told Tim to open up the case in which he did.

Q. Okay. Were you somehow hired by the F.B.I. at this first meeting?

A. No.

Q. Okay. Were you given any assignment by the F.B.I. at that first meeting?

A. Just to forward any additional claim information to them when I – after I received and reviewed it.

Q. Additional claim information on this claim or other claims?

A. Other claims.

Q. But did there come a time when you were actually employed and I mean employed in the sense of being paid by the F.B.I. to conduct any further investigation regarding the Daniels?

A. Never.

Q. Did you conduct additional investigation regarding the Daniels after the date that you met with the F.B.I.?

A. Only under their direction and direct supervision.

Q. So you were under their supervision but not in their employ in connection with the investigation?

[107] A. That's correct.

Q. Is there some sort of documentation that they were supervising you in anything that you did after the initial meeting with regard to the damage?

A. I don't know what type of documentation they keep.

* * *

[119] [DIRECT BY MR. VANZO]

Q. You took no notes of your meeting with Rick Daniels?

A. Of the interview?

Q. Yes.

A. No.

Q. Did Agent Campbell take notes?

A. He did a Form 302 which is a statement form that the F.B.I. does.

Q. And would you have a copy of that Form 302 in your case file?

A. No.

Q. Do you personally have a copy of that Form 302?

A. No.

* * *

[173] [CROSS EXAMINATION BY MR. RUBINO]

Q. And what about him having other claims was significant to you?

A. It was mentioned in the hotline call that there was other stolen vehicles that were probably orchestrated by him and those claims were found.

Q. Did you find evidence, any evidence whatsoever that he had stolen or had other vehicles stolen and made fraudulent insurance claims?

A. I didn't investigate that part.

Q. Okay. So that allegation you thought was important but you didn't investigate it. What allegations are you talking about that he made other fraudulent claims?

A. I accessed the claim files but however this was the investigation I was assigned and this is the investigation I was doing.

Q. During the course of this investigation, did you find any evidence whatsoever that he in fact had made other fraudulent claims involving stolen vehicles?

A. None that was absolute.

Q. Name one that was suspicious that you had evidence [174] that there was a suspicious claim?

A. I don't recall at this time.

Q. Now this hotline – this supposed hotline call, it was an anonymous caller?

* * *

BY MR. RUBINO: (Continuing)

Q. The hotline call that was reported to you, it was by an anonymous person?

MR. BULLARO: This question was asked and answered. We spent a lot of time referring to it.

MR. RUBINO: He referred to it being a confidential informer.

MR. BULLARO: I thought he said anonymous.

THE WITNESS: Well, it wasn't reported to me. It was reported to Liberty Mutual and I believe it was anonymous.

BY MR. RUBINO: (Continuing)

Q. Did you ever learn the identity of this hotline tipster?

A. Did I, no.

* * *

[199] [CROSS EXAM BY MR. RUBINO]

Q. To your knowledge did anybody at NICB before Butler got involved ever form the belief or opinion that Ricky or Kenny Daniels set this motor home on fire intentionally?

A. No.

* * *

[202] BY MR. RUBINO: (Continuing)

Q. The question is was it your belief before you took this file to the F.B.I. that it was Kenny Daniels' expectation that he was going to get the insurance proceeds from the fire loss within a day or two to be able to get his new motorcycle?

MR. BULLARO: Make an objection. The witness has answered. That question has been asked and he answered as to the significance of the motorcycle as to being just one other factor to raise suspicion.

MR. RUBINO: You can answer.

THE WITNESS: Just one other contributing part confirming what was on the hotline call or the anonymous call.

BY MR. RUBINO: (Continuing)

Q. Okay. And so that was one of the reasons that you espoused today that you took the file to the F.B.I., [203] the fact that the motorcycle came in the day before the fire?

A. Correct.

Q. And that he might be using those proceeds from the fire loss claim to pay for the motorcycle; right?

A. That's the words of the hotline caller, not mine.

Q. Well, was it – that was one factor that had, that you believed?

A. Confirming the words of the hotline caller, not my opinion.

Q. Was that your opinion?

A. I don't make opinions like that.

Q. But you made the opinion to take the case to the F.B.I., that was your opinion?

A. Yes; that's right.

Q. At the time that you were working jointly with the F.B.I. and the U.S. Attorney as part of their team, you were being paid by NICB?

A. Correct.

Q. Getting your regular salary?

A. Correct.

Q. You weren't losing any time or pay?

A. No.

Q. You were working on other files at the time?

A. Yes.

[204] Q. How many files – during that period of time that you got the assignment from Surber to the time that you took the file to the F.B.I., how many other files were you investigating for the NICB?

A. Can I make a clarification?

Q. Yeah.

A. They're called cases.

Q. Cases?

A. They contain numerous files but the cases, about 24.

Q. And they are all fire losses?

A. No.

Q. What subjects do they cover?

A. Casualty losses, staged accidents, chiropractors inflating and unbundling their bills, the whole gambit. Slip and falls.

Q. So a lot of very complex, detailed stuff?

A. Correct.

Q. And so the Daniels' case during that – that was really about two weeks that it took you to decide to take it to the F.B.I. Is that about right?

A. No.

Q. How long?

A. About four.

Q. Okay. During this four-week time in addition to whatever work you were doing that you told us about on [205] the Daniels' case, you're also working on these other 24?

A. Correct.

Q. And how many hours a day do you work or how many hours a day did you work during that time?

A. Eight to ten.

Q. Five hours – or five days a week?

A. Sometimes six.

* * *

[222] THE WITNESS: No.

BY MR. RUBINO (Continuing)

Q. Did you ever do any background checks or any investigation into Ricky or Anna's background before you took the case to Butler?

MR. BULLARO: Other than the witness – what the witness has testified to?

THE WITNESS: Other than, no.

BY MR. RUBINO: (Continuing)

Q. At any time did you believe that, before you took the case to Butler, that Anna had anything to do with any insurance fraud?

A. No.

Q. When you said that you had taken the file to the F.B.I. and that I think you used the terms you opened up a joint investigation, could you explain what you meant by that?

A. That means that the F.B.I. and the NICB would work this case jointly.

Q. And did each party participate equally in this joint investigation?

A. I don't know if there's a gauge to say who's doing what, who's participating, but mutual agreement that we're working it together.

Q. Well, in your opinion who did most of the work, you or [223] the F.B.I.?

A. F.B.I.

Q. Now can you give us in your opinion what the percentage of the investigative work was?

A. Probably 80/20.

MR. BULLARO: 80 being who?

THE WITNESS: 80 being F.B.I.

* * *

[236] BY MR. RUBINO: (Continuing)

Q. When you took the case file to the F.B.I., you indicated that you had made a presentation to them. Could you explain what the presentation consisted of?

A. That's a Word document, template.

Q. I'm sorry?

A. It's a Word document template.

Q. What does that mean?

A. It's called an Investigative Presentation. You fill in the blanks.

Q. Okay. What, you gave them a piece of paper or file or?

A. That's right.

Q. And did you sit down and go through documents and say look at this, look at this, look at this statement, look at that inconsistency?

A. Correct.

* * *

[253] [CROSS] BY MR. RUBINO: (Continuing)

Q. – during the – during the trial of Ricky and Bucky Daniels?

A. Some of it.

Q. Did you sit at the prosecution table during the time that you were there during the trial?

A. I – sometimes maybe but mostly in the peanut gallery.

Q. During the time that you were at the trial, what interaction or involvement did you have with the prosecution?

A. Nothing.

Q. Did you assist in providing information or documents –

A. No.

Q. – for the preparation of witnesses?

A. No.

Q. Did you – were you present during any prosecution, U.S. Attorney meetings in preparation for the trial?

A. No.

Q. Did you meet with Clarence Butler during the trial?

A. No, I believe my job was to go out and get the next witness and bring them in.

Q. For the prosecution?

[254] A. Yes.

Q. You weren't doing that for the court or the defense?

A. No.

Q. So that was your role in assisting the prosecution at the trial?

A. That was about it, yeah.

Q. And when you sat at counsel table, what was the purpose of you sitting at the counsel table?

A. Don't know. Done that before at other trials.

Q. And in sitting there, you were sitting there as a representative of the NICB, is that how you were introduced to the jury?

A. I'm not sure if most of the people there knew who I was.

Q. Well, prior to the trial beginning when everybody was introduced to the jury, weren't you introduced as a representative of the National Insurance Crime Bureau?

A. I'm sure I was.

Q. And that was at trial to the jury?

A. I'm trying to think if there was formal introductions, if that's protocol, yeah, but I can't remember personally.

Q. Your best recollection is that you think that did happen?

A. I think that's protocol and probably happened at some.

* * *

[256] Q. You had indicated earlier that you were not present in the grand jury?

A. Correct.

Q. Were you present in the courthouse where the grand jury was being conducted?

A. Yes.

MR. BULLARO: Objection. And don't answer that question.

THE WITNESS: Okay.

MR. RUBINO: He has answered.

BY MR. RUBINO: (Continuing)

Q. You had earlier indicated that you were part of the investigation team and I guess I'm just curious why were you not participating inside the grand jury?

MR. BULLARO: Objection. Don't answer the question.

BY MR. RUBINO: (Continuing)

Q. After the trial did you have any communication verbally or nonverbally with Ricky or Bucky?

A. No.